

Office of Minority and Women's Business Enterprises
406 Water Street SW
PO Box 41160
Olympia WA 98504-1160

September 19, 2011

RE: Complaint

I would like to file a complaint against three certified minority businesses in the Seattle area certified to perform work under NAICS 238110-concrete pumping. All three businesses are certified to perform work under multiple NAICS codes. My complaint and knowledge relates only to their practices relevant to NAICS code 238110-concrete pumping.

The names of the 3 firms are:

[REDACTED]
Leajak Concrete Construction Inc. / Certification #D3M5310714
[REDACTED]

I have knowledge these three firms are functioning as a conduit on projects to pump concrete. None of these firms owns concrete pumps. They lease concrete pumps from non certified firms (which I understand is allowed). They claim to have their own employees to drive and operator the concrete pumps. However, I can prove they do not.

"Common industry practice" is to lease a concrete pump with an operator. A concrete pump is leased with an operator for several reasons. Typically a general contractor will schedule a concrete pump one to two days in advance of it being needed on a jobsite. Several federal and state requirements need to be completed prior to an operator legally driving and operating a concrete pump. These requirements normally take days to complete. Concrete boom pumps are mounted on large trucks that require the operator to have a commercial driver's license and medical card. The operator is required to pass a DOT drug test prior to employment. An operator also needs to supply their last 12 months driving record and both the operator and employer need to review and sign off on the driver's record. The operator, prior to driving and operating a concrete pump needs to demonstrate to the employer they can meet the qualifications required to drive and operator a concrete pump. This "qualification requirement" needs to be documented by both the operator and employer. In addition, the employer needs to train the employee on the concrete pump's safety requirements and both the employer and the operator needs to document this training occurred. A certificate of the operator's "qualification" and "training" needs to be carried with the employee in the vehicle. The operator needs to be familiar enough with the vehicle to daily conduct a pre-trip and a post trip inspection of the vehicle. A copy of these inspections must be returned to the employer daily and one needs to stay in the vehicle. The operator daily needs to complete a log of hours driven

and worked. The log must contain the previous seven days. Within the first 30 days of employment, the employer is required to contact the operator's three preceding year's employers to verify driving history, work performance history, and drug testing results. All of these requirements have paperwork that the employer must keep on record as verification the regulations have been followed. These requirements are located in 49 CFR Federal Motor Carrier Safety.

"Common industry practice" is for the general contractor to schedule a specific size concrete pump, based on it reach. A project may need a 32 meter boom one day and a 58 meter boom on another. No one size concrete pump fits all the general contractors' needs. Concrete Pumps are scheduled as needed, rarely with any consistency. Therefore, concrete pumps are not left on a jobsite. General contractors don't want any unnecessary equipment taking up valuable real estate on a commercial jobsite. It would be unlikely that one operator would be sent to a project to operate several different size concrete pumps. Concrete pump owners try to keep operators on the same or similar size pumps so the operator is familiar and responsible for their "own" pump. The large booms require a much more skilled experienced operator who will be paid more than a smaller boom operator. These operators do not get dispatched on a small pump when work is available for a large pump. These are more reasons why "common industry practice" is for a concrete pump to be leased with an operator.

Per 49 CFT Subpart D 26.71(m) "In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm." I understand these firms have the right to lease the equipment from a non-certified business. However, the operator (the employee) is being shared. I am aware in some instances while on the certified firms' jobsite, the operator is getting paid by the certified firm; while the rest of his work week he is getting paid by his employer, the non-certified firm. The majority of the time the non certified firm supplies the pump and pays the operator. The certified minority firms are functioning as a conduit.

I understand these three certified firms are allowed to lease the concrete pump; however, they must have their own employees perform the work of operating the concrete pump. I am aware of prevailing wage jobs these firms have been hired on to pump concrete. I have reviewed all of the Intents and Affidavits filed by these three firms and none show they have ever paid or intended to pay a concrete pump operator. This does not appear to meet the minority certification requirement. You can review this by going to the following website; <https://fortess.wa.gov/1ni/wagelookup/searchforms.aspx>

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I am aware Leajak Concrete Construction Inc, was awarded the concrete pumping on the UW Business School Building, Phase 1. Leajak filed an Affidavit for the project stating Leajak did not have employees performing work on the project. Leajak referenced Ralph's Concrete Pumping. In looking at Ralph's Concrete Pumping Intents and Affidavit's, Ralph's did pay the labor to operate the concrete pumps on the UW Business School Building, Phase 1. I have enclosed paperwork verifying this information.

On the OMWBE website you highlight [REDACTED] Inc. as a Certification Celebrity Success Story for concrete pumping at the Brightwater Sewer Treatment Plant. [REDACTED], Inc. filed one Intent to pay prevailing wages for that project. That Intent stated one journey level cement mason and one laborer cement finisher would be employed. Albeit, three concrete pumping companies filed eight Intents and two Affidavits for concrete pump operators. Who employed the concrete pump operators on that project? It appears it was not [REDACTED]. I have enclosed all the paperwork regarding this information.

I understand to avoid "intertwinement" these firms are not to share facilities (among other things). I have enclosed pictures of a project in which Leajak Concrete Construction, Inc. was awarded the concrete pumping because he was a minority certified firm. My pictures show a Ralph's Concrete Pumping concrete pump on this jobsite and then leaving this same jobsite. I am aware the operator of that Ralph's concrete pump on Leajak's concrete pumping project is an employee of Ralph's. I followed that concrete pump back to Ralph's Concrete Pumping yard. (Also interesting to note, although I know it's not your department, that Ralph's had one license plate number of the front of the vehicle and a different one on the back.)

[REDACTED] was recently awarded the concrete pumping of [REDACTED]. This is over [REDACTED] worth of concrete pumping. [REDACTED] did file an Intent indicating they have "Laborers" performing "Concrete Dumper/Chute Operator". They will pay a wage of \$31.70/hour. To be correct this should read "Power Equipment Operators" performing "Concrete Pump - Truck Mount with Boom Attachment for \$47.42/hour. (A difference in wages of \$15.72/hour) On the [REDACTED] indicated they would not be hiring any subcontractors. I encourage you to visit the website [REDACTED]. The fact is he has hired [REDACTED]. You will see (and I've enclosed five pictures from the website) all the concrete pumps are [REDACTED] concrete pumps.

Per WAC 326-20-081 "Intertwinement", these three firms are intertwined with non-certified businesses with regards to (3) Shared equipment, facilities, resources, or employees; (5) Over dependency on a non-certified business to perform work. (6) Such an identity of interest exists between the certified business and a non-certified business that an affiliation may be presumed; and (7) The degree to which equipment, leasing,

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business and other relationships with non-certified businesses vary from normal industry practices.

I understand there may be explanations for all of these situations. However, it appears to me these minority certified businesses are not following the rules. I have been financially harmed by their practices. I appreciate your time and hope you will investigate, enforce the laws, and monitor these three minority certified companies'. For fear of retaliation from these businesses and others in the concrete pumping industry I, unfortunately, do not feel I can sign this letter.

Thank you.

Enclosures



Printer Friendly 

Affidavit Details

Document Received Date 1/12/2011 Intent Id 217430 Affidavit Id 317915 Affidavit Status Approved on 1/12/2011

Your Company Information

Name LEAJAK CONCRETE CONST INC
 Address P O BOX 250
 MOUNTLAKE TERRAC, WA, 98043
 WA UBI no. 601573914
 Contractor Registration no. LEAJACC065P1
 Industrial Insurance Account Id 830,414-01
 Email Address leajak.concrete@verizon.net
 Filed By fred anderson

Project Information

Awarding agency: UNIVERSITY OF WASHINGTON
 PO BOX 352210 SEATTLE, WA 98195
 Awarding agency contact: Ethan Frye
 Awarding agency contact phone number: 206-391-7254

Project Details

Project name UW Business School Bldg Phase 1
 County where work was performed King
 City where work was performed seattle
 Job site address/directions:
 Prime contractor name SELLEN CONSTR CO INC
 Prime contractor registration no. SELLEC*372N0
 Contract no. 201837
 Prime contractor Phone Number 206-682-7770
 Prime contractor Intent form Id# for this project
 Dollar amount of your contract: \$ 139,616.00
 Bid due date 2/22/2007
 Contract award date 9/29/2008
 Intent filed date 11/19/2008
 Job start date: MM-DD-YYYY 1/1/2009
 Date work completed: MM-DD-YYYY 10/18/2010

Project Completion

Did your subcontractors perform all work on this project? Yes
 Did your company hire any subcontractors? Yes
 Did your company have employees perform work on this project? No
 Did this project utilize American Recovery and Reinvestment Act (ARRA) funds? No

Specifically, did this project utilize any weatherization or energy efficiency upgrade funds (ARRA or otherwise)? No

Company Owner Information

How many owner/operators performed work on the project that own 30% or more of the company? 0

No company owner added.

Affidavit Subcontractor(s)

Company Name	UBI	License#
Ralph's Concrete Pumping	578085430	N/A

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Apprentice Wages

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